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Chapter 2

Trade Facilitation in Brunei Darussalam and the Results of the ASTFI Baseline Study¹

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1. Overall Trade Facilitation Environment

Brunei Darussalam's economy is primarily driven by oil and gas, which account for more than half of its gross domestic product (GDP) and over 90% of exports and government revenue. This high dependence on non-renewable resources makes Brunei Darussalam vulnerable to volatile oil and gas prices. Since the oil price collapse in mid-2014, Brunei Darussalam has been experiencing fiscal pressures and has undergone fiscal consolidation. The economy contracted for four consecutive years before achieving modest 1.30% growth in 2017, aided by a recovery in oil prices.

Brunei Darussalam's merchandise exports decreased from \$10,566 million in 2013 to \$6,551 million in 2018. The exports are mainly crude petroleum and liquefied natural gas, which represent 41% and 49% of total merchandise exports in 2018, respectively. The largest export partners are the Association of Southeast Asian Nations (ASEAN), Japan, the Republic of Korea, and Australia. Brunei Darussalam's merchandise imports increased from \$3,338 million in 2013 to \$4,152 million in 2018. Manufactures dominate Brunei Darussalam's imports, with machinery and transport equipment making up the top largest imports, representing 40% of total merchandise imports in 2018, respectively. The main import partners are China, ASEAN, the United States, and the European Union.

The country's trade performance suggests that trade facilitation will also play a role in the future to facilitate more non-oil and gas exports.

While Brunei Darussalam is a net exporter of merchandise goods, it is a net importer of services. The deficit decreased from \$2,185 million in 2013 to \$1,004 million in 2018 due to a decline in services imports. In 2016, Brunei Darussalam's services trade exports were mainly in transport and travel, while imports consisted of transport, travel, construction, maintenance and repair, telecommunications, computer and information services, and other business services.

1.1. Policy and Institutional Setting

Trade Facilitation Environment

Under Brunei Darussalam's Constitution, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam is the head of state and has absolute executive and legislative powers. His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam is also the head of government and is served by the Council of Cabinet Ministers, in which His Majesty the

¹ This report is based on the 2018 data of the ASTFI baseline study survey.

Sultan and Yang Di-Pertuan of Brunei Darussalam is the Prime Minister, Minister of Defence, Minister of Finance, and Minister of Foreign Affairs and Trade. The Legislative Council advises and debates on policies under consultation or implementation, and considers and approves annual government budgets. All the cabinet ministers and legislative members are appointed by His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam. Brunei Darussalam's legal system is based on common law and Sharia law.

Brunei Darussalam's initiatives towards diversifying its economy are guided by its Long-Term Development Plan, National Vision 2035. In recent years, Brunei Darussalam has undergone significant institutional changes and policy reforms to improve the business environment, facilitate trade, and attract foreign direct investment (FDI). The Ease of Doing Business Steering Committee, an inter-ministerial and multi-agency institutional setup, has successfully coordinated and implemented various reforms, which have seen Brunei Darussalam climbing up the ranks of the World Bank's Doing Business rankings. In 2018, Brunei Darussalam improved from 72nd to 56th position. For the third consecutive year, Brunei Darussalam is the most improved economy in the world.

The Ministry of Foreign Affairs and Trade, in cooperation with other ministries and agencies, leads the formulation and implementation of Brunei Darussalam's trade policy. Brunei Darussalam remains committed to free and open trade, and is of the view that active engagement in free trade agreements (FTAs) with key strategic partners will help increase market access and investment inflows to help its diversification efforts. Under the ASEAN framework, Brunei Darussalam has FTAs with Australia and New Zealand, China, India, Japan, and the Republic of Korea. Brunei Darussalam also has a bilateral agreement with Japan (Brunei Darussalam–Japan Economic Partnership Agreement) and is involved in negotiations for the Regional Comprehensive Economic Partnership and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

Brunei Darussalam has very low tariffs. The simple average applied most favoured nation rate has decreased from 3.3% in 2006 to 0.2% in 2018. Meanwhile, the total number of tariff lines has increased from 10,689 (HS 2012) to 11,206 (HS 2017). However, there remains a significant difference between the applied most favoured nation tariff and the bound rate average (25.5% in 2018). While tariff rates in Brunei Darussalam are low, non-tariff measures (NTMs) are relatively high, dominated by technical barriers to trade and sanitary and phytosanitary requirements, contributing to 55.8% and 31.2% of the total of 516 NTMs, respectively. Most of the NTM regulations are for public health safety considerations on product quality.

The Royal Customs and Excise Department (RCED), under the purview of the Ministry of Finance, is tasked with facilitating customs procedures. Led by the RCED, Brunei Darussalam has implemented a National Single Window (NSW) to simplify trade-related processes and procedures through an integrated electronic platform, including an e-customs system. This has resulted in an improvement in key indicators of 'Trading across Borders' in the World Bank's Doing Business report. Likewise, the time taken to import

has reduced from 19 days to 7.5 days. While this improvement is remarkable, trade transaction costs are still much higher than in ASEAN neighbours.

Several regulatory agencies are involved in the trade facilitation process, particularly in granting licences or permits for controlled imported goods. The major agencies covered in this report are the Department of Agriculture and Agrifood (DAA) in the Ministry of Primary Resources and Tourism, the Halal Food Control Division (HFCD) in the Ministry of Religious Affairs, the Food Safety and Quality Control Division (FSQCD) and the Department of Pharmaceutical Services (DPS) in the Ministry of Health, and the Authority for Building Control and Construction Industry (ABCI) at the Ministry of Development (MOD).

The DAA is tasked with issuing imports permits and transit approvals for agricultural commodities such as live animals, Halal meat products, vegetables, fruits, eggs, plants, crops, and soil. It also performs desk audit and import risk analysis prior to importation approval, manages agricultural quarantine stations, and conducts physical risk-based inspection at ports of entry.

The HFCD is in charge of granting approvals for the importation of Halal meat products. It maintains stringent standards for Halal meat imports, such as requiring approved Halal supervisors and physical inspection of the abattoirs in the exporter's country, for which the full costs are borne by the importer. The final decision on issuing import permits is made by the Brunei Islamic Religious Council (MUIB). In addition to the HFCD and the DAA, importers of Halal meat products also require endorsement from the FSQCD and the RCED. For non-Halal meat products and processed food products, import permit approval is only sought from the FSQCD.

The DPS regulates the importation of pharmaceutical products, including medicines, health supplements, herbal, and cosmetic products. It also conducts risk-based inspections. The ABCI is tasked with issuing import permits for cement, red clay bricks, coarse aggregates, fine aggregates, and sand, while risk-based inspection and surveillance audit are conducted by the Public Works Department in the MOD. In January 2017, the cement import quota was abolished to foster healthy competition and allow cement prices to be market-determined.

Brunei Darussalam also restricts exports of certain goods, mainly subsidised products, to ensure adequate domestic supply and price stability. There are no export taxes or levies.

Brunei Darussalam's transport infrastructure consists of a maritime port (Muara Port), an international airport (Brunei International Airport), and a road network linking the country to Sabah and Sarawak. There are nine legal entry and exit points. The responsible transport agencies in the Ministry of Communications engaged in transport facilitation are the Department of Civil Aviation, Land Transport Department, and Maritime and Port Authority Brunei Darussalam, in close collaboration with relevant government agencies.

Brunei Darussalam's logistics infrastructure is relatively underdeveloped, ranking 70th in the World Bank Logistics Performance Index in 2016. Likewise, Brunei Darussalam has one of the lowest shipping connectivity scores, as measured by the United Nations Conference on Trade and Development (UNCTAD) Liner Shipping Connectivity Index. This could be attributed primarily to the size and structure of the Brunei Darussalam economy.

Customs Procedures

To make trading easier, the RCED introduced an electronic customs system (e-customs) in 2010. The e-customs system allows the trading community to submit applications electronically to the RCED for processing, including automatic calculations of customs duties and billing, resulting in a faster turnaround time. In addition, this central database enables ease of information retrieval and sharing, thereby facilitating monitoring of risks.

Implementation of the e-customs system is the first step towards establishing the Brunei Darussalam NSW. The Brunei Darussalam NSW was implemented in 2013 and allows for electronic submission of customs declarations and permit applications for approval from 20 government agencies and online payment of customs duties. Essentially, this eases the flow of information as well as enhancing transparency and efficiency.

Other Trade-Related Reforms

Over the past several years, a series of reforms has been implemented to improve the business environment. Various investment and tax incentives have been introduced, e.g. encouraging the establishment of industrial and economic enterprises under the Investment Incentives Order of 2001 and changes to the Income Tax Act (Chapter 35) enacted in 1949 to gradually reduce the corporate tax rate from 27.5% in 2008 to 18.5% in 2018. In 2016, Darussalam Enterprise (DARe), the national small and medium-sized enterprises (SMEs) body, was set up to support local businesses ranging from start-ups to growth enterprises by providing capacity building programmes, industrial space, international market access opportunities, and financing. All their programmes and services can be found online (DARe, n.d.). Other institutional setups include the Brunei Economic Development Board as the national investment promotion agency, and the FDI Action and Support Centre to facilitate incoming investment in a fast-track approval process.

Brunei Darussalam has made amendments to its intellectual property rights regime by passing various legislation on copyright, patents, trademarks, industrial design, and plant variety protection, as well as establishing the Brunei Intellectual Property Office in 2013. Brunei Darussalam has also acceded to and participated in various intellectual property rights agreements and treaties to comply with international standards.

The Department of Economic Planning and Development in the Prime Minister's Office is tasked with administering three important pieces of legislation: competition, consumer protection, and price control. The Competition Order, 2015 was passed to enhance economic efficiency and consumer welfare by prohibiting anti-competitive agreements, abuse of dominant power, and anti-competitive mergers. Consumer protection came into

force in 2012 under the Consumer Protection (Fair Trading) Order, 2011 to protect consumers against unfair business practices. The Price Control Act (Chapter 142) enacted in 1974 regulates the prices of selected essential goods specified in the law, sale activities, and display of prices.

To support fair trade and competitiveness and to address safety and consumer protection, the National Standards Centre is tasked with regulating standards and conformance in accordance with national, regional, and international requirements. As a centralised body, the National Standards Centre also provides guidance and information on standards, conformity assessment, product certification, and accreditation administered by other government agencies – e.g. food testing by laboratories in the Ministry of Health, telecommunications equipment licence approval from the Authority for Information Technology Industry, and Halal permits and certificates from the Ministry of Religious Affairs.

The Government of Brunei Darussalam takes an active stance on corporatisation, with a view to improving accountability and governance, thereby enhancing efficiency and productivity. One of the tasks of Darussalam Assets is to improve the corporate governance structure of government-linked companies across various industries such as aviation, telecommunications, power utilities, logistics, agribusiness, food and beverages, leisure and tourism, medical, education, hospitality, and real estate. In an effort towards a balanced budget, the government is also engaging the private sector and FDI to work with the public sector, especially in infrastructure development, through public–private partnership to address Brunei Darussalam’s infrastructure gap and to realise the objective of several economic and social policies – including the stimulation of private sector growth, investment opportunities, and streamlining the public sector workforce.

2. Results of the ASTFI Survey

A questionnaire survey was conducted during the first half of 2018 with government agencies on four components: (i) transparency and information on laws, regulations, and procedures; (ii) communication with and active engagement of the private sector; (iii) release and clearance formalities; and (iv) import/export formalities and coordination. The results of the survey are summarised below.

2.1. Transparency and Information on Laws, Regulations, and Procedures

Brunei Darussalam performs relatively well under this component, despite some variations amongst the indicators. The information for export and import formalities is available for the public to access from a single website called ‘Trading Across Borders’ (RCED, n.d.). It is important to note, however, that the information available on this website may not necessarily be available in each of the major agencies, making the ‘Trading Across Borders’ platform a very unique practice this is not commonly available in other countries.

Brunei Darussalam has established a National Trade Repository, which can be accessed through its portal (BDNTR, n.d.). The repository includes trade-related information such as Brunei Darussalam's preferential tariff rates as well as the rules of origin under the various ASEAN FTAs amongst others.

2.2. Communication with and Active Engagement of the Private Sector

Brunei Darussalam performs relatively well under this component. Although it does not have any official mechanism such as a national trade facilitation committee (NTFC), there exists coordination, on an ad-hoc basis, between ministries for issues pertaining to international trade. As for the development of micro, small, and medium-sized enterprises, it is facilitated by the national SME body (DARe). DARe provides a Business Support Centre for businesses to obtain business advice and information on business-related processes; learn about and apply for SME programmes and incentives; and register business-related issues, feedback, and inquiries. The DARe Business Support Centre also houses a Business Helpdesk to facilitate business-related issues and enquiries. This internal coordination mechanism is equivalent to an NTFC.

2.3. Release and Clearance Formalities

Brunei Darussalam performs moderately well under this component, but with high variations amongst its indicators. For example, Advance Rulings are restricted to applicants and are not made publicly available. While the exclusivity of the Advance Ruling decision is arguably sensible – as export–import transactions can be unique (transaction-specific) – this is not yet in accordance with best practices where Advance Ruling decisions are open to the public. Pre-arrival document processing is available in the two major ports of Brunei Darussalam (i.e. Muara Port and Brunei International Airport).

The RCED and the DPS adopt risk management commonly applied by customs in other countries, i.e. assessing import goods by applying inspection randomly or based on some risk factors, and there is no target rate of inspection. The HFCD also applies a risk management system, but it is only to fulfil the requirements of Halal food products. As noted earlier, risk management applied by the HFCD involves physical inspection by HFCD officials at the premises of the producers of the imported products in the exporting countries. This applies once for processed food and every time for raw food (e.g. meat such as chicken or beef). The special characteristic of Halal food inspection is arguably a system that applies risk management principles. For the DAA, physical inspection is conducted due to strict requirements applied by the department on imports of raw food or vegetables. For example, consignments containing imported raw beef meat from India are inspected for every consignment, but consignments containing imported raw beef meat from Australia are inspected only once over a period of time (e.g. once every 3 months). The RCED and all major agencies therefore apply risk management systems, but the systems are not yet fully integrated.

Consistent with the application of the risk-based approach for the arrival of imports, the RCED implements post-clearance audit. The HFCD does not implement post-clearance audits, but this is not necessary because – as explained above – the risk management system for Halal food involves careful inspection before the importing is done. The DAA also does not implement post-clearance audits due to strict physical inspection of consignments from high-risk importers. As noted earlier, for cement imports, the Public Works Department conducts post-clearance audits on behalf of the MOD. The DPS conducts inspections under Post-Market Surveillance Activities.

The RCED allows the release of imported goods without payment. However, for the moment, it applies only for Authorised Economic Operators (AEOs) under the Sutera Lane Merchant Scheme. Non-AEOs must still clear all payments before the RCED releases their goods.

The RCED allows all necessary payments for importation and exportation to be made electronically. Payment at the DPS is still done manually. Electronic payments are only applied to import permits for documents issued by the DAA, but payments for export permits issued by the DAA are still done manually. As of now, electronic payments are accepted only by customs but not by other major agencies.

In terms of a review and appeal mechanism, there is an initial appeal review mechanism to customs (e.g. customs tribunal), but judicial appeal is not yet available.

The RCED publishes dwell time information on a monthly basis for pre-clearance, customs clearance, and post-clearance for imports at Muara Port. The RCED only conducts Time Release Studies (TRSs) on an ad hoc basis and does not publish them; to date, TRSs have only been used for internal purposes. The last TRS was done for 2015.

The RCED has established Trusted Traders and AEO programmes, but mutual recognition agreements (MRAs) have not yet been established. The compliance of Brunei Darussalam's AEO programme with the World Customs Organization standard is currently being assessed.

Brunei Darussalam has pilot projects for self-certification with Malaysia, Singapore, and Thailand. The RCED allows expedited clearance for air, sea, and land cargo. Simplified declarations for expedited shipments and packages of a value under de minimis are allowed. Targeted traders are (i) express couriers (de minimis), (ii) perishable items, (iii) government consignments, (iv) emergency aid, and (v) AEOs. A temporary admission regime is implemented in Brunei Darussalam, but it is not yet in full compliance with the Istanbul and/or the Admission Temporaire/Temporary Admission (ATA) Convention.

2.4. Import/Export Formalities and Coordination

Brunei Darussalam performs relatively well under this component, but with significant room for improvement. The RCED and most of the major agencies accept digital copies for trade permits or other requirements. Original copies, however, are still required by the DAA, except import permits.

Brunei Darussalam has implemented the NSW since 2013. It now covers all major agencies (20 agencies) related to trade facilitation and is operating truly as a 'single window' for importation (i.e. permits are all submitted and issued through the NSW system, not separately by each agency and then sent to the NSW system). Processing for exportation is not yet implemented through this truly single window system and is therefore an area for improvement in terms of NSW implementation in the country. The link between the NSW and the ASEAN Single Window is at a pilot stage.

2.5. Issues and Challenges

The survey results suggest that there are gaps in the trade facilitation process as in best practices. While the structure follows common practice in principle, some key elements are not yet maximised to deliver a robust trade facilitation system.

The survey identified the following gaps:

First, more information could be provided to the public, such as the tariff rates of FTAs and the publication of the granted Advance Ruling applications on the 'Trading Across Borders' website.

Second, communication and consultation with the private sector is done on an ad hoc basis; a formal structure has not yet been established within the decision-making process in trade facilitation.

Third, while the RCED and the major agencies apply a risk management system, these systems are not yet integrated/consolidated. A few major agencies have also not implemented a post-clearance audit system.

Fourth, a mechanism to allow the separation of customs clearance and release of goods currently applies only to AEOs under the Sutera Lane Merchant Scheme.

Fifth, some major agencies have not mainstreamed electronic payment systems; only the RCED applies it fully, while the DAA applies it partially (only for import permits).

Sixth, TRSs are done only for internal purposes.

Seventh, the NSW is fully implemented only for importation; it is partially implemented for exportation as it has only engaged two agencies for export permits at the time of writing.

3. Recommendations

The discussion on the issues and challenges presented earlier suggests the following key directions to move forward.

First, to continue trade facilitation reforms to close the gap with best practice. This includes all elements presented earlier in the discussion (i.e. providing more information to the public, including the publication of TRSs; a consultative process with the private sector; a risk management system; a customs clearance process; and the NSW).

Second, to increase the 'digitalisation' of document processing and payments. It seems that this is not yet mainstreamed amongst major agencies. This is important to increase efficiency and reduce the processing time. Related to this, it is important to ensure sufficient investment in technology for trade facilitation, such as installing an electronic data interchange system. This is also important considering that Brunei Darussalam is engaging in FTA negotiations with developed countries, including the Regional Comprehensive Economic Partnership.

Third, to move forward with expansion of the NSW to cover the exportation process. As reported, the NSW covers only importation and only two agencies for exportation. Considering the ability of the country to implement full NSW implementation (an NSW with a single submission system), it should be simple for customs to expand it to exportation.

Fourth, to expedite the movement of goods across borders by encouraging the use of an approved simplified process such as pre-clearance or expedited clearance and self-certification programmes.

Fifth, to increase the effort for more intensive socialisation and consultation with the private sector and/or businesses. One clear effort that could be made is to create an official platform for the NTFC.

Sixth, it is important for Brunei Darussalam to strengthen and conduct further reforms in other policy areas, such as foreign investment, and possible fiscal policy to promote exports.

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